

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

KWAI CUFFIE,)
v. Plaintiff,) No. 2:17-cv-00815
MACY'S,) District Judge Arthur J. Schwab
Defendant.) Magistrate Judge Lisa Pupo Lenihan
) [ECF No. 10](#)
)

MEMORANDUM ORDER

This *pro se* civil rights action was commenced on June 20, 2017. The Complaint was filed in the above captioned case on June 26, 2017, after Plaintiff's Motion to Proceed *In Forma Pauperis* was granted. The case was referred to United States Magistrate Judge Lisa Pupo Lenihan for pretrial proceedings in accordance with the Magistrate Judges Act, [28 U.S.C. §636\(b\)\(1\)](#), and Local Rules of Court 72.C and 72.D.

The Magistrate Judge's Report and Recommendation ([ECF No. 10](#)), filed on August 17, 2017 ([ECF No. 10](#)) recommended that this civil action be dismissed without prejudice under 28 U.S.C. §1915(e)(2)(B)(ii) for failure to state a claim upon which relief may be granted, and that Plaintiff be granted leave to file a third amended complaint, to correct the deficiencies noted in the Report and Recommendation, within fourteen (14) days of the date of the District Judge's order on the Report and Recommendation. The Report and Recommendation further recommended that if Plaintiff failed to timely file

a third amended complaint or notified the Court that he did not intend to file a third amended complaint, that the case be dismissed with prejudice.

Service of the Report and Recommendation was made on Plaintiff at his address of record, 1716 Davidson Street, Aliquippa, PA 15001, via U.S. First Class Mail. Plaintiff was informed that in accordance with the Magistrate Judges Act, [28 U.S.C. § 636\(b\)\(1\)\(B\)](#) and (C), and Rule 72.D.2 of the Local Rules of Court, that he had seventeen (17) days to file any objections. Prior to the deadline for filing objections, Plaintiff filed his Third Amended Complaint ([ECF No. 11](#)) on August 31, 2017. Plaintiff has not filed any objections to the Report and Recommendation.

After review of the pleadings and documents in the case, together with the Report and Recommendation, the following Order is entered:

AND NOW, this 1st day of September, 2017,

IT IS HEREBY ORDERED that the Report and Recommendation ([ECF No. 10](#)) is **ADOPTED IN PART AND REJECTED IN PART**. The Report and Recommendation is adopted in full except with regard to granting Plaintiff fourteen (14) days from the date of this Order to file a Third Amended Complaint. Because Plaintiff has already filed his Third Amended Complaint, the part of the Report & Recommendation recommending leave to amend has been rendered moot, and therefore, is rejected.

IT IS FURTHER ORDERED that the Report and Recommendation ([ECF No. 10](#)) of Magistrate Judge Lenihan, dated August 17, 2017, is adopted as the opinion of the Court.

BY THE COURT:

s/Arthur J. Schwab
ARTHUR J. SCHWAB
United States District Judge

cc: Kwai Cuffie, *Pro Se* Plaintiff
1716 Davidson Street
Aliquippa, PA 15001
Via U.S. First Class Mail